

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3518 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? -
2. To be referred to the Reporter or not? - :
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? -
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? -
5. Whether it is to be circulated to the Civil Judge? : NO
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RAMNIKLAL SHAMJIBHAI PANDYA

Versus

STATE OF GUJARAT

Appearance:

MR PV HATHI for Petitioner
MR VB GHARANIYA, AGP for Respondents.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 03/03/2000

ORAL JUDGEMENT

The petitioner who was a non-metric, joined the former State of Junagadh on 10th June, 1948 as a clerk. The petitioner had passed Sub-service Departmental Examination in 1956 and he was promoted as Aval Karkun i.e. Deputy Mamlatdar in the year 1965 and he retired

from service from 1-2-1978 as Deputy Mamlatdar.

2. By means of this petition, the petitioner sought for quashing the judgment and order dated 15-12-1987 passed by the Civil Services Tribunal and for a direction to the respondent pursuant to the Government Memorandum dated 7-8-1978 to grant all the consequential benefits in terms thereof and to declare the action of the Collector in not granting deemed date of promotion to the post of Aval Karkun to the petitioner was illegal and unconstitutional.

3. The State of Saurashtra issued the Circular dated providing that non-metriculate Clerk should not be promoted to the higher post of Aval Karkun. Later on, State framed statutory Rules in 1956 providing that a Clerk who has completed eight years of service will be eligible for promotion as Aval Karkun and therefore prohibition imposed by the aforesaid Circular dated 4-5-1955 was superseded and nonmatriculates having put in eight years service were made eligible for promotion as Aval Karkun. The petitioner claimed that he should be given deemed date for promotion as Deputy Mamlatdar from the date when his juniors were given promotion. He submitted representation dated 14-7-1984 to the respondent Collector, Jungadh, wherein he has stated that he had become due for promotion to the post of Deputy Mamlatdar on completion of eight years service as a Clerk on 10-8-1956 under the provisions of the Memorandum dated 11-8-1978. The State Government issued a memorandum dated 7th August, 1978, wherein it was directed that the nonmatriculate who had completed eight years service and had become eligible for promotion to the post of Sr. Clerk/Avval Karkun and prohibition/ban which was imposed by the Circular dated 4-5-1955 of the former State of Saurashtra for promotion on higher post for nonmatriculate Clerk was cancelled in view of the provisions of Recruitment Rules, 1956. Matriculate clerks who are not given promotion to the post of Aval Karkun on account of their being nonmatriculate clerks, they should be given deemed date and to have been promoted as Aval Karkun from the date of their immediate junior has been given promotion to the post of Aval Karkun. However, such employees were not entitled to get the amount of difference of salary for the period from which they have been given deemed date till actual date of promotion.

4. In view of the memorandum issued by the State Government the petitioner claimed deemed date of promotion from the date when three of his juniors have

been promoted to the post of Mamlatdar on earlier date Shri S.M. Pandya was promoted on 2-8-57 and H.K. Nimavat was promoted on 15-10-1957 and Shri J.M. Vyas was promoted on 27-9-1959 and the petitioner has not been granted promotion from the deemed date on which his juniors have been promoted. The Collector, Junagadh informed the Mamlatdar that the petitioner's representation was rejected because Shri H.K. Nimavat had started his career as Civil Supply Inspector, a cadre higher than the cadre of clerk to which Shri Pandya belonged when he joined service. The petitioner filed Appeal No.475/86 before the Gujarat Civil Service Tribunal. The Tribunal issued directions to the respondent Collector to examine the request of the petitioner for grant of deemed date on the basis of earlier promotions given to other junior persons. The respondent Collector submitted the detailed remarks on 23-9-1987 and the case was heard on 8-12-1987. The Tribunal examined the question as to whether there is any substance in the request of the petitioner to grant him date 27-7-1959 as his deemed on which his junior Mr. J.M. Vyas was actually promoted to the post of Deputy Mamlatdar.

5. On behalf of the respondent Collector it was stated that the appellant has not given particulars regarding Mr. J.M. Vyas and hence he was unable to give any remarks and the service book of Shri J.M. Vyas was not available.

6. The Tribunal after considering the material on record dismissed the appeal of the petitioner by the order dated 15-12-1987.

7. Heard learned counsel for the parties at length. The main contention of the learned counsel for the petitioner is that the petitioner was not promoted to the higher post only because that he was nonmatriculate. The other persons who were matriculate were granted promotion. In view of the memorandum received by the Government, the petitioner is entitled to promotion from the date on which his juniors have been promoted.

8. I have considered the matter in dispute carefully and perused the relevant papers on record. The petitioner joined his service in the year 1948 and he retired in the year 1978. The petitioner has not been given promotion in the year 1965 because he was nonmatriculate and his juniors being matriculate and being more qualified persons were promoted to the higher posts. The petitioner was nonmatriculate and hence he

was not given promotion. The representation was filed only in the year 1984 and that representation was considered by the appropriate authority and the petitioner was given promotion in the year 1965. No doubt, the memorandum of the State Government provides the deemed date for promotion on which juniors have been promoted. But such persons who were not given deemed date were given promotion from the date of deemed date. It appears that representation was not before the appropriate authority at the relevant time and hence the name of the petitioner was not incorporated in the memorandum of the State Government.

9. After such long time, I do not think it proper to exercise extra ordinary jurisdiction of this Court under Article 227 of the Constitution of India even if the concerned authority has committed any error to give deemed date for promotion of the petitioner on which juniors to him were promoted. I do not find good ground to interfere with the judgment and order dated 15-12-1987 passed by the Civil Service Tribunal. Accordingly, this petition is dismissed. Rule is discharged with no order as to costs.

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/JVSatwara/